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INTERNATIONAL PAPER

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U.S. Department of Transportation
Dockets Management Facility, Room PL-401
400 Seventh Street, SW
Washington, DC 20590-0001

International Paper desires to place the following comments in the record in response to **Docket No. FMCSA-97-2289**, Development of a North American Standard for Protection Against Shifting and Falling Cargo.

International Paper is a manufacturer and national distributor of paper, paper products, lumber, building products and other related commodities as well as being a major national distributor of office and printing supplies. IP loads and secures over 500,000 truckload van shipments per year at mills and warehouses and also loads over 300,000 truckload flatbed shipments per year which are secured by carrier personnel. These loads originate at facilities across the nation. In addition to the for hire transportation utilized, International Paper operates over 1600 private trucks to assist in the delivery of its goods and products and holds a Satisfactory safety rating from the Department of Transportation.

General Observations and Comments

International Paper Strongly opposes these regulations in their current form. In what was no doubt a good faith effort to produce a regulation that would be a model of clarity and would reinforce performance based securement methods and materials, the FMCSA chose not to bring the general cargo provisions of the Draft Model Regulation of May 1999 forward into the FMCSA proposed regulation. Instead the FMCSA chose to rewrite the general cargo provisions. The result is the creation of an ambiguous regulation that will be subject to wide variations in interpretation and enforcement.

The sections of the Model Draft Regulation pertaining to specific commodities were brought forward virtually untouched. The specific commodity sections, like the general provisions in the Draft Model Regulation, reflect industry and

government consensus arrived at, not always in perfect harmony, after years of work.

In the preamble to the proposed regulation the FMCSA states that it would not bring provisions from the Model Draft Regulation forward that were not consistent with the agency's approach to establishing performance based rules. Two specific examples are cited; requirements for specific types or grades of securement devices and rules requiring tiedowns to be positioned at certain angles irrespective of the practicability of doing so. We strongly agree with the FMCSA's decision concerning these two provisions. However, we do not agree with elimination of virtually every other provision of the general cargo securement rules in the Model Draft Regulation that do not deal with tie down devices.

One of our major concerns with the proposed regulation is it's ambiguity about securement methods other than tiedowns that are currently authorized for use. A critical omission from the proposed regulation is any language similar to the Model Draft Regulation that states "Cargo must be contained or secured so that it may not leak, spill, blow, fall from, fall through or otherwise become dislodged from the vehicle; or swing or shift upon or within the vehicle to such an extent that the vehicles stability is adversely affected." The Model Draft language is clearly performance based. Instead of language which is clearly performance based we now have only vague references to systems other than tiedowns in § 393.102 (b), 393.104 (a)(b) and § 393.110 (b).

Specific Observations and Comments

Section 393.102

Section 393.102 (a) sets forth minimum performance criteria that cargo securement devices and systems are required to meet. This performance criteria requires that cargo securement devices and systems have the capability to withstand forces of 0.8g deceleration in the forward direction, 0.5 g deceleration in the rearward direction and 0.5 g deceleration in a lateral direction.

By the DOT's own admission[1] the proposed levels of deceleration have not been achieved by loaded vehicles under actual test conditions. The values were chosen based on researchers' analysis rather than the results of actual vehicle tests which were unable to achieve 0.8g of deceleration[2]. We believe that a minimum performance criteria of 0.6 g forward, 0.35 g lateral and 0.25 g rearward have been proven in real world testing and are realistic and should be adopted.

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[1]Page 79054, Federal Register/Vol. 65, No. 243

[2]DOT HS 807 846, March 1992, "An in-Service Evaluation of the Reliability, Maintainability and Durability of Antilock Braking Systems (ABS) for Heavy Truck Tractors"

We are opposed to any standard of performance that can not be verified or demonstrated to have been achieved by testing under actual conditions rather than by computer model or only under laboratory conditions. We believe that a standard which can not be proven to have been met or exceeded may occasion tort theories and enforcement practices that none of us can foresee and that none of the parties to this proceeding intend. Further, a standard that can not be tested using ordinary and reasonably available equipment will introduce an element of uncertainty into the design, manufacturing and marking of securement materials, systems and trailers. Since manufacturers will not be able to guarantee shippers and carriers that components will actually perform to the standard under real world conditions, there will be uncertainty about when the regulations have been fully complied with and when no negligence attaches to the carrier or shipper using a particular system or device. In such an environment spawned by this pseudo-science we can expect to see over engineered, over built and more costly products in the marketplace that make no meaningful contribution to public safety.

Further, we can not imagine how an enforcement officer would factually determine whether or not a component or system meets the requirements. If it can not be determined whether or not a component or system meets the requirements, then the requirements are meaningless.

If it is the firm conviction of the DOT that anti-lock brake systems, tire composition, tread configuration, and other technological advances will eventually allow real world achievement of the 0.8/0.5 g standards, then it would be reasonable to set the standards today at known testable levels such as 0.6 g forward and 0.35 g lateral and 0.25 g rearward and then increase the standard by some reasonable amount such as 0.025 g per year or 0.05 every other year until the 0.8/0.5 g standards are in effect.

393.102 (b)

This section clearly states that only securement systems that provide a downward force equivalent to at least 20 percent of the weight of the cargo are authorized if the cargo is not fully contained within the structure of the vehicle to prevent vertical movement. Vertical means up and down; unless the FMCSA really meant to use the words "forward direction" as in § 393.110 (b). Use of the word "vertical" means that unless cargo is packed into a trailer so tightly that it can not move in an upward direction because of friction from the walls of the trailer, tiedowns are mandatory. Tiedowns are the only securement systems that exert downward pressure on cargo. Blocking, Bracing, mats, void fillers, dunnage bags, and other securement systems would not meet the requirement of § 393.102 (b) since they exert no downward pressure. For clarification, subsection (b) should be deleted in its entirety and subsection (c) should be redesignated as subsection (b).

We estimate the requirement that all cargo in a van must be tied down unless it is contained within the structure of the vehicle to prevent vertical movement would increase labor and material costs for all International Paper divisions and subsidiaries by approximately **(US) $50,000,000 per year**.

Section 393.104

Section 393.104 (a)

This section states that all devices and systems used must be capable of meeting the requirements of § 393.102. Section 393.102 contains the 0.8/0.5 g **standards that can not be tested**. From an enforcement standpoint, how do you determine whether or not devices and systems meet the requirements of §393.102 ?

Section 393.104 (b)

All trailers and all securement devices and components become scuffed, scratched, dented and otherwise display signs of fair wear and tear after even short periods of use without having their structural integrity affected. The requirement that components ".....must not have any visible damage, including but not limited to cracks, cuts and deformation." will cause problems in the field. The intent is to prohibit use of damaged components that will not function as a result of the extent of their damage. The real effect will be to make the definition of damage a completely subjective one and cause uneven application. Section 393.104 (b) should be amended to contain language to the effect that signs of fair wear and tear are acceptable but cracks, cuts, and deformation which would materially affect the performance of the component are not. International Paper Company would be much more inclined to accept a subjective value judgment based on a major defect than it would on a minor defect that may or may not affect the performance of a securement system component.

Section 393.106

Section 393.106 (b)

This section gives the mistaken impression that the only cargo securement devices authorized under the regulations are direct or indirect tiedown devices. This was never anyone's' intent. This subsection should be a free standing subsection, perhaps
§ 393.107, and titled so that it does not convey the impression that it is a general requirement instead of a specific requirement applicable only when tiedown

devices are used in lieu of or in addition to other authorized securement materials and systems.

Section 393.110

Again, this section, like §393.106 (b) gives the erroneous impression that the only method of cargo securement authorized are tiedown devices except when cargo is blocked or positioned to prevent movement in the forward direction. This is the only section that even mentions blocking as an authorized method of cargo securement.
No mention is made in any section, including this one, of alternative securement methods and materials that will perform safe cargo securement, and yet blocking, bracing, friction mats and void filler are included in the definitions in § 393.5.

Section 393.124

Section 393.124 (c)(3)(ii) states that "The width of individual spacers must be greater than the height." This requirement does not take into account a long standing practice in some segments of the building products industry in which a square spacer is grooved or slotted to accept a unitizing strap or band which binds it to a number of panels to form a compact and solid unit or the square spacer is attached to the unitizing strap or band with heavy duty staples in each end of the spacer. We suggest that § 303.124 (c) (3)(ii) be amended to read as follows: "The width of individual spacers must be greater than the height unless the spacer is grooved or slotted to accept a unitizing band or strap which securely binds the spacer to a number of sheets of material to form a single unit or the unitizing band or strap is attached to each end of the spacer with heavy duty staples."

Training and Implementation

An implementation date of July 1, 2001 is unreasonable given the vast scope of the application of the proposed regulations. Such short notice would still be unreasonable even if a final rule had been adopted and training materials and training personnel were sitting at the ready. As it is, virtually every truck driver in the nation and every worker and supervisor on every shipper truck dock where cargo securement is done must be trained. All securement materials on hand at carriers and shippers must be inspected to insure that it complies with the regulation and if it does not, new securement materials must be obtained. All industry loading patterns, diagrams and manuals must be reviewed for compliance and rewritten where necessary.

A more reasonable and realistic time frame for implementation of the new regulations would be somewhere in the area of twelve months after the training material and programs have been developed and approved for use. Publication of a final rule should be conditioned on the time required to complete and approve the training material plus at least twelve months to conduct training.

In Conclusion

International Paper strongly opposes these regulations as currently drafted and encourages the Administration to revise the provisions dealing with tie down devices in preference to any other system or material. In addition, the FMCSA states in the preamble to the regulation that "The FMCSA believes the vast majority of motor carriers have a sufficient supply of tiedown devices on board their vehicles at all times." The mention of tiedown devices rather than cargo securement devices or systems reveals a zealous enthusiasm on the part of the FMCSA in favor of tiedown devices in preference to any other performance based system or material.

As a rule, truckload van carriers of general commodities do not carry tiedown devices in their trailers and rarely have more than the occasional cargo bar. Not only does the FMCSA erroneously believe that carriers own large numbers of tie down devices, but they appear to be unaware of the fact that shippers, not carriers perform the loading and securement of the majority of truckload van freight. Truckload van carriers do not perform loading and securement of heavy articles of freight, such as almost anything strapped or shrink wrapped on a pallet.

We ask that the FMCSA revisit the Model Draft Regulation and amend the current proposal to more closely adhere to the clearly stated performance based characteristics of the Model Draft Regulation. We are very concerned that the proposed regulations for the securement of general cargo will result in needless and completely avoidable litigation due to widespread misinterpretation and misapplication by shippers, carriers and enforcement agencies to the detriment rather than the improvement of highway safety.

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